SUPREME COURT, U. S.

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No. 329

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUMBLE PIPELINE COMPANY,

Petitioner

vs.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,

Respondent

On Petition of Humble Pipeline Company for Writ of Certiorari to the Court of Appeal, Second Circuit, State of Louisiana.

BRIEF OF RESPONDENT ON THE MERITS

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On Petition of Humble Pipeline Company for Writ of Certiorari to the Court of Appeal, Second Circuit, State of Louisiana.

BRIEF OF RESPONDENT ON THE MERITS

QUESTION INVOLVED

The sole question which is presented for determination in this case is whether or not the State of Louisiana, and its taxing authorities, in Ward Two of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the plaintiffs, used and maintained by them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base.

STATEMENT OF THE CASE

In each of these cases, the respective taxpayer seeks to recover, pursuant to State law (LSA-RS 47:2110), certain ad valorem taxes assessed and levied against it by the State of Louisiana and by its various taxing authorities, in Ward Two of Bossier Parish, Louisiana, and which in each instance were paid by the taxpayer under protest.

In the year 1930, the United States acquired from the State of Louisiana, City of Shreveport, and the Board of Commissioners of the Bossier Levee District (an agency of the State), respectively, certain lands approximating 22,000 acres situated in Bossier Parish, Louisiana. (Interstate Exs. 3, 4, 5; R. 54, 59; R. 64, 69; R. 69, 75-76) The conveyances so made were admittedly donations. (Admissions of Fact R. 16) See, also, *Mississippi River Fuel Corporation v. Fontenot* (CCA 5) 234 F 2d 398, certiorari denied, 352 U S 916, 1 L Ed 2d 122, 77 S Ct 213.

The conveyances were made pursuant to the provisions of LSA-Const. Art. 4 § 12, upon the condition that the grantee would establish, operate and maintain a military air force base upon such lands. During the years 1930, 1931 and 1932, the United States constructed on a relatively small portion of the acreage acquired the contemplated post and facilities known as "Barksdale Field" (name since changed to "Barksdale Air Force Base") and has since maintained the same as required by military air force demands.

Of the total acreage acquired by the United States, as aforesaid, the cantonment area of Barksdale Air Force Base covers about 1,000 to 1,500 acres, and an additional semi-improved part of the base, which includes the air-field proper, comprises another 1,500 acres, leaving about 19,000 acres of unimproved land known as the East Reservation. (R. 79).

Relative solely to the positions of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, the record reveals that in the year 1961, it was determined by the federal government that certain of the acreage within the total area acquired, as aforesaid, was being drained of minerals through wells drilled on privately owned lands; consequently, jurisdiction over 2,060 acres, comprising a part of the vast East Reservation, was transferred pursuant to public Land Order No. 701, dated February 21, 1951 (16 F. R. 1901) and Executive Order No. 9337 of April 24, 1943, from the Department of the Air Force to the Department of the Interior with the provision that: "There is no interference with the primary use of Barksdale Air Force Base." Thereafter, a lease of the transferred acreage for oil and gas purposes was effected (R. 24-45), and pursuant thereto Natural Gas and Oil Corporation drilled certain wells productive of oil and gas. The various oil and gas producing equipment and pipe owned and maintained by said lessee, and situated on said base, in connection with said wells, have been assessed and levied upon as to that taxpayer for ad valorem tax purposes. The said Natural Gas and Oil

Corporation subsequently merged with Mississippi River Fuel Corporation.

In regard to Humble Pipe Line Company (formerly Interstate Oil Pipe Line Company), the taxes herein involved were imposed against its two interstate oil trunk pipelines, of 8-inch and 10-inch diameters, respectively, and extending a distance of 2.91 miles within the acreage acquired by the United States, as aforesaid. The said pipelines are not located within the area covered by the said oil and gas lease, but, instead, are within the developed area of the base or military reservation proper. It is undisputed that none of the production from the wells on the said leased lands is transported or carried through said pipelines.

The same legal principles are generally applicable to the cases of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation (No. 354) and of Humble Pipe Line Company (No. 329), and, therefore, they have been consolidated in this Court, just as they were in the State trial and appellate courts.

SUMMARY OF ARGUMENT

I. (a) The United States did not acquire, by the weight of Art. 1 § 8, cl. 17, of the United States Constitution alone, "exclusive" jurisdiction over the lands which it obtained for Barksdale Air Force Base, because they were procured by donation, and not by purchase or condemnation.

Art. 1 §8, cl. 17, of the United States Constitution; *State ex Rel Board of Com'rs. of Valley County v. Bruce, County Assessor, et al* 69 P 2d 97, affirmed 305 US 577, 83 L Ed 363, 59 S Ct 465; *Paul v. United States*, 371 US 245, 9 L Ed 2d 292, 83 S Ct 426.

(b) The State of Louisiana ceded exclusive legislative jurisdiction to the United States for military purposes.

Act 12 of 1892 of the Louisiana Legislature; Act 31 of 1942 of the Louisiana Legislature; LSA-RS 52:1.

II. (a) The land leased and that traversed by the pipelines were not to be used for the erection of a fort, magazine, arsenal, dock-Yard or other needful buildings for military purposes; and, neither the oil field equipment nor the pipelines sought to be taxed have any logical connection with or benefit to the military purpose of the Air Base.

Murphy Corporation v. Fontenot, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54.

(1) Leased land is set apart and physically separated by fence from the remaining lands of the reservation.

(2) As to the land traversed by the pipelines, the United States has only a naked ownership since a servitude or real right is vested in the pipeline company.

(b) The transfer of a lease to private hands constituted a relinquishment or abandonment of control as to

the land affected, and, if "exclusive" jurisdiction vested in the United States, the reason therefor ended with the reason for its existence and the execution of the lease.

S. R. A. v. Minnesota, 327 US 558, 90 L Ed 851, 66 S Ct 749.

(c) As to the lands traversed by the pipelines, the United States either could never have acquired "exclusive" jurisdiction thereof if the servitude existed at the time of its acquisition, or it relinquished or abandoned such jurisdiction as to said lands if, in fact, it subsequently granted the servitude.

S. R. A. v. Minnesota, 327 US 558, 90 L Ed 851, 66 S Ct 749.

(d) The residual power to tax is retained by the State where the United States acquired land other than by purchase or condemnation, and the land is not used for military purposes.

Fort Leavenworth R. R. Co. v. Lowe, 114 US 525, 29 L Ed 264, 5 S Ct 995.

III. The United States clearly manifested its intention not to accept exclusive jurisdiction by its dependence upon the State and Parish authorities for public utilities and school facilities, and by the insertion in the oil and gas lease of the clause obliging the lessee to pay all taxes due on the production from wells and its other properties physically situated on the leased lands.

Murphy Corporation v. Fontenot, 225 La. 379, 73 So. 2d 180; certiorari denied 348 US

831, 99 L Ed 655, 75 S Ct 54; *International Business Machines Corporation v. Ott*, 230 La. 666, 89 So. 2d 193; Oil and Gas Lease, under Rents and Royalties, (7) (K).

IV. (a) There is no power more basic to the ultimate purpose and function of a State government than is the power to tax.

84 CJS 41, § 4; *Bates v. Little Rock*, 361 US 516, 4 L Ed 2d 480, 80 S Ct 412; *James v. Dravo Contracting Co.*, 302 US 134, 82 L Ed 55, 58 S Ct 208.

(b) The exercise of the State's taxing power has done no violence to Federal right or intent; the record clearly shows that the taxes have not affected, impeded, or interfered in any way whatever with the military or governmental functions of the United States.

(c) The jurdisprudence clearly favors the exercise of a State's jurisdiction in the exaction of a tax where it is not imposed upon, or in any wise affects, the property or functions of the Federal Government.

James v. Dravo Contracting Co., 302 US 134, 82 L Ed 55, 58 S Ct 208; *Fort Leavenworth R. R. Co. v. Lowe*, 114 US 525, 29 L Ed 264, 5 S Ct 995; *Silas Mason Co. v. Tax Commission*, 302 US 186, 82 L Ed 187, 58 S Ct 233; *International Business Machines Corporation v. Ott*, 230 La. 666, 89 So. 2d 193; *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L. Ed 655, 75 S Ct 54; and *Mississippi River Fuel Corporation v. Fontenot*,

234 F 2d 898, certiorari denied, 352 US 916, 1 L Ed 2d 122, 77 S Ct 213.

V. (a) The oil and gas lease is the law of the case as to the lessee.

Murphy Corporation v. Fontenot, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54.

(b) The claims of the taxpayers are based solely upon the fact that their privately owned properties, used and maintained by them in their commercial pursuits are situated on the Air Base; this gives them no right to clothe themselves with the mantle of governmental immunity.

Esso Standard Oil v. Evans (U. S. v. Evans), 345 US 495, 97 L Ed 1174, 73 S Ct 800; *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54; *Mississippi River Fuel Corporation v. Fontenot*, 234 F 2d 898, certiorari denied, 352 US 916, 1 L Ed 2d 122, 77 S Ct 213.

VI. The State's tax laws, which were in existence at the time of the Federal Government's acquisition of such lands, remain enforceable as to privately owned properties, used and maintained in the taxpayers' commercial pursuits.

Arlington Hotel Company v. Fant, 278 US 439, 73 L Ed 447, 49 S Ct 227; *James Stewart & Company v. Sadrakula*, 309 US 94, 99, 100, 84 L Ed 596, 600, 60 S Ct 431, 127 ALR 821; *Paul v. United States*, 371 US 245, 9 L Ed 2d 292, 83 S Ct 426.

ARGUMENT

I.

Land Neither Acquired by Purchase nor Condemnation

It is, indeed, undisputed herein that the lands acquired by the United States were by donation. The language and provisions of the respective instruments of conveyance fully establish and confirm this.

The power of "exclusive" legislation granted to Congress over certain enclaves by Art. 1 § 8, cl. 17, of the United States Constitution, which is relied upon herein by the taxpayers in support of their contention that the State is without power to tax, clearly extends, by its very language, solely to land "purchased" within a state with the consent of its legislature.

The word "purchase", as used in the clause of the Constitution, does not have the technical meaning of the term at common law of an acquisition of lands other than by descent or inheritance, but has the meaning of an acquisition thereof by an actual purchase. *State ex Rel Board of County Com'rs. of Valley County v. Bruce, County Assessor, et al* (S Ct Montana 1937) 69 P 2d 97, affirmed (divided court) 305 U S 577, 83 L Ed 363, 59 S Ct 465.

Property acquired by condemnation, however, has been recognized to come within this meaning. Paul v. United States 371 U S 245, 9 L Ed 2d 292, 83 S Ct 426. In that case, Mr. Justice Douglas, speaking for the majority of the Court, said:

> "Thus if the United States acquires with the 'consent' of the state legislature land within the borders of that State by *purchase or condemnation* for any of the purposes mentioned in Art. 1 § 8, cl. 17, or if the land is acquired without such consent and later the State gives its 'consent', the jurisdiction of the Federal Government becomes 'exclusive'." (emphasis supplied)

Although the constitutional provision has been implemented by the cases to include an acquisition by condemnation, undoubtedly for the reason that it is considered a compulsory sale of one's property, a further expansion of its meaning to include a donation would be entirely alien to its provisions and intent.

The conclusion, therefore, is inescapable that the United States did not acquire, by the weight of said constitutional provision alone, exclusive jurisdiction over the lands in question. However, the consent of the State of Louisiana to the donations, as contained in Act No. 12 of 1892, and as later amended by Act No. 31 of 1942 (embodied in the Louisiana Revised Statutes of 1950 as Title 52, § 1) ceded pursuant to its provisions exclusive legislative jurisdiction to the Federal Government over the lands so acquired.

II.

Neither Leased Lands nor that Traversed by Pipelines Meet Prescribed Purposes

The power of "exclusive" legislation over places "purchased by the consent of the Legislature", which is granted to Congress by Art. 1 § 8, cl. 17, as aforesaid,

is clearly limited to land procured for the "erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings". Moreover, in this instance the State's consent was conditioned upon the use of said land for military purposes.

It is true that the 22,000 acres of land were acquired by the United States for use as an Army Air Force Base. However, the facts unquestionably show that of that total acreage, the cantonment area and semi-improved part of the base, which includes the airfield proper, comprise approximately 2,500 or 3,000 acres, leaving about 19,000 acres of unimproved land known as the East Reservation.

It is in this vast East Reservation that the leased lands are located.

The oil and gas lease herein involved, and the lands thereby affected, are the very same as those which were at issue in *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54. In upholding therein the State's levy against the lessee of a severance tax at the time of severance of the minerals from the leased lands, the Supreme Court of Louisiana said:

> "* * * the land leased was not to be used for the erection of a fort, magazine, arsenal, dock-Yard or other needful buildings for military purposes."

And, still further, it remarked:

> "The acceptance * * * by the Secretary of War states that the property is to be used for military pur-

poses. When the Secretary of War transferred certain portions of the land to the Department of the Interior, and the Commandant of the Air Base certified that such leases would not interfere with the governmental operations of the Air Base, we had a splendid affirmative of the position taken by the State."

It was established in that case that the leased land was actually physically separated from the land used for the governmental purposes of the Air Force. This is reflected by the following additional quotation from that case, viz:

"The land leased was set apart from the land used for the governmental purposes of the Air Force Department. *In fact, there was a dividing fence between the oil field and the Air Force Base.* The private owners were granted the right of use and control over all instrumentalities, owned and constructed by them, such as drilling machines, towers, tanks and pipe lines for their private commercial purposes to explore for oil and gas and to reduce such to private ownership." (emphasis supplied).

The existence of such "dividing fence" as referred to by the Louisiana Supreme Court in *Murphy v. Fontenot*, supra, is established by the lease itself, wherein in Sec. 2, paragraph (r) (1) and (2), it is provided as follows:

"Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(r) Use and Protection of Property.—

(1) Except as may otherwise be authorized in writing by the Department of the Air Force, and to the extent that this lease covers lands embraced in tracts 1, 2, and 3 as described in the notice of sale of this lease, not to utilize or otherwise invade the surface of

(i) That portion of Tract 1 embracing the N ½ SE ¼, N ½ SE ¼ SE ¼ SW ¼ SE ¼ SE ¼ SW ¼ SE ¼ sec. 10, and the NW ¼ SW ¼ sec. 11, T. 17 N., R. 12 W.

(ii) That portion of Tract 2 embracing the W ½ NW¼ sec. 7, T. 17 N., R. 11 W.

(iii) That portion of Tract 3 embracing the W ½ W ½ sec. 6, T. 17 N, R. 11 W.

(2) *The use and occupancy of the remaining leased lands i. e. that portion of the lease not included in any of the above described lands of the preceding paragraph, is subject to relocating at the sole expense of the lessee, the boundary fence of the Barksdale Air Force Base in the manner and to the extent prescribed by the officer in charge of said Base to the end that such portion of the lease will be outside such relocated fence and no lease operations permitted within such fence.* In addition the lessee shall construct and maintain a fire break if and to the extent reasonably required by said officer in charge, such fire break to parallel the relocated fence." (emphasis supplied)

Still further Section 1 of the lease grants to the lessee the right "except as is otherwise provided in section 2(r) hereof" (the portions pertinent hereto being

quoted hereinabove) to construct and maintain on the 2060 acres leased works, buildings, and other facilities necessary to the full enjoyment of the lease.

As to the land traversed by the two pipelines of Humble Pipe Line Company (located within the developed area of the base, and not a part of the said East Reservation), the United States finds itself with only a naked or imperfect ownership, for a servitude or real right across the land under which the lines pass is clearly vested in said company. LSA-C. C. Art. 490. Either the Federal Government took the lands donated to it subject to such servitude, if, in fact, then existing, or a grant of right of way was subsequently made by it to such company. Thus, either the United States originally acquired an imperfect title, or else its full ownership was later reduced, as to such land burdened with a servitude, to that of an imperfect title. Exclusive jurisdiction was either never possessed, or it was thereafter relinquished.

Neither the oil field equipment nor the pipelines belonging to the taxpayers and sought to be taxed have any logical connection with or benefit to the military purpose of the Air Base. In neither the operation of the oil field nor the pipelines was the respective taxpayer militarily engaged. *Murphy Corporation v. Fontenot*, supra, 73 So. 2d, at page 184.

To the extent necessary for the enjoyment of the lease and servitude, the Federal Government abandoned its control over the lands involved in such activities. This Court considered for the first time the question of the effect

on Federal sovereignty of a property's transfer by the United States to private hands in *S. R. A. v. Minnesota*, 327 US 558, 90 L. Ed. 851, 66 S Ct 749, where was involved an executory contract of sale with title yet remaining in the Government, and said:

> "As the purpose of clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power."

In *Fort Leavenworth R. R. Co. v. Lowe*, 114 US 525, 29 L Ed 264, 5 S Ct 995, this Court clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of its own powers, viz:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general

government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over any other places within her limits.*" (emphasis supplied)

III.

Evidence of Intention of United States Not to Accept Exclusive Jurisdiction

In any event, the facts clearly establish that the Federal Government did not intend to accept the grant of exclusive jurisdiction which was ceded to it by the State of Louisiana. Nor, of course, was it compelled to do so. Such was recognized by this Court in *Silas Mason Co. v. Tax Commission*, 302 U S 186, 82 L Ed 187, 58 S Ct 233, wherein (302 US 207, 208) it said:

> "The mere fact that the Government needs title to property within the boundaries of a state * * * does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction."

In *International Business Machines Corporation v. Ott* 230 La. 666, 89 So. 2d 193, the Supreme Court of Louisiana upheld certain State imposed ad valorem taxes on business machines owned by the plaintiff and leased to the Federal Government, and situated on sites over which jurisdiction had been ceded to the United States. It said:

> "The view of presumed acceptance of ceded jurisdiction which was followed in certain cases, was subjected to a thorough re-examination in two suits presented to the Court in the term beginning October, 1937; James v. Dravo Contracting Company, 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155, and Silas Mason Co. v. Tax Commission, 302 U. S. 186, 58 S. Ct. 233, 82 L. Ed. 187."

And, still further it said:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant."

It was concluded in that case that the acceptance by the United States of various services (fire protection, sewerage, water and drainage facilities, police traffic regulation) furnished by the City of New Orleans failed to indicate an intention to exercise control in those respects, but rather manifested a contrary intent, citing Silas Mason, supra.

The record herein reveals that Barksdale Air Force Base is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the parish school system a per capital charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the

State and Parish authorities for those services. The State appelate court herein very appropriately said:

> "Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects."

Furthermore, under the terms of the oil and gas lease, in Section 2, under Rents and Royalties, (7) (K), the lessee is required

> "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property or assets of the lessee; * * *"

This lease evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base.

IV.

Taxing Power Basic to Purpose and Function of State Government

The taxing power of a State flows from a recognized continuing necessity to accomplish its inherent purposes and functions, and is, therefore, essential and basic to its very survival and sovereign existence.

84 CJS 41, § 4;

Bates v. Little Rock, 361 US 516, 4 L Ed 2d 480, 80 S Ct 412.

In the latter case, citing *James v. Dravo Contracting Co.*, 302 US 134, 82 L Ed 155, 58 S Ct 208, the Court aptly commented:

> "No power is more basic to the ultimate purpose and function of government than is the power to tax."

The State's legislative consent as contained in Act No. 12 of 1892, as amended by Act No. 31 of 1942, and embodied in the State's Revised Statutes as Title 52 § 1, guarantees as to the lands donated exemption from all taxation, assessments, and charges levied under authority of the State. The taxes in these instances were not levied against the Federal Government, nor are they levied against any of its lands or instrumentalities.

The record utterly fails to show that such taxes have affected, impeded, or interfered with in any way the military or governmental functions of the United States. To the contrary, it is abundantly established that the State's exercise of taxing power has done no violence to Federal right or intent. The facts clearly reveal that the State's jurisdiction in these respects has been entirely consonant with the recognized concept of independence and sovereignty of the Federal Government.

As proof thereof, there was the transfer of the leased lands by the Secretary of War to the Department of the Interior and the certification by the Commandant of the Air Base that such leases would not interfere with the governmental operations thereof; the physical separation of the leased lands from the Air Base by a dividing fence, and the autonomous development and operation of

the oil field; the lease provision with regard to the payment of taxes; and, quite significantly, neither the Air Base nor the Federal Government itself has ever complained of any interference or jeopardy.

James v. Dravo Contracting Co., supra, involved the question of whether a tax imposed by the State of West Virginia upon the gross receipts of a contractor under contracts with the United States was constitutional. In holding that the tax did not interfere with the performance of federal functions and was a valid exaction, this Court said:

> "The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system. * * * We said [Willcutts v. Bunn, 282 US 216, 51 S Ct 125, 75 L. Ed. 304, 71 A. L. R. 1260]: 'The power to tax is no less essential than the power to borrow money, and, in preserving the latter, it is not necessary to cripple the former by extending the constitutional exemption of taxation to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of the functions of government.'"

As still further authority favoring the exercise of a State's jurisdiction in the exaction of a tax where it is not imposed upon, or in anywise affects, the property or

functions of the Federal Government, see *Fort Leavenworth R. R. Co. v. Lowe*, supra; *Silas Mason Co. v. Tax Commission*, supra; *International Business Machines Corporation v. Ott*, supra; and, *Mississippi River Fuel Corporation v. Fontenot* (CCA 5) 234 F 2d 896, certiorari denied, 352 US 916, 1 L Ed 2d 122, 77 S Ct 213, wherein was upheld, just as in Murphy Corporation v. Fontenot, a severance tax imposed by the state of Louisiana on a severer of oil and gas from the very same leased lands as are herein involved.

V.

Sovereign Immunity as to State Taxation Does Not Extend to Others

The agreement of lease entered into by the Federal Government, as lessor, and the taxpayer, Natural Gas and Oil Corporation, as one of the original lessees, is the law of the case.

Murphy Corporation v. Fontenot, supra.

This agreement provides, among other things, as aforesaid, that the lessee must "pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee * * *" But, the taxpayers contend that this is merely a "stock phrase" and not intended to impose upon the lessee the obligation to pay such taxes as are herein imposed.

In *Murphy Corporation v. Fontenot*, supra, the Supreme Court of Louisiana rejected such a contention in the following language, to-wit:

> "To follow the plaintiff's contention, we must give no effect to the mandatory provisions of Section 2 (7) (k) of the lease in question, and we must likewise say that such a provision together with the pertinent authorities on Constitutional questions by the courts are mere abstractions affording no real protection."

The situation simply is that after accepting the provisions of the lease and agreeing to be bound thereby, Natural Gas and Oil Corporation and its successor, Mississippi River Fuel Corporation, are attempting to clothe themselves with the mantle of governmental immunity. Their claim, just as that of Humble Pipe Line Company, is based solely on the fact that their privately owned properties, used and maintained by them for their commercial purposes, are situated within the enclosure of Barksdale Air Force Base. This constitutes no valid basis for immunity, for appropriate hereto is the following language from *Esso Standard Oil v. Evans* (U. S. v. Evans) 345 US 495, 97 L Ed 1174, 73 S Ct 800, to-wit:

> "The constitution does not extend sovereign exemption from state taxation to corporations or individuals contracting with the United States merely because their activities are useful to the government."

In *Mississippi River Fuel Corporation v. Fontenot*, supra, certiorari denied, the Fifth Circuit Court of Ap-

peals answered the taxpayer's claim of immunity, and its contention as to the lease provision, as follows:

> "Putting to one side all the refinements which have attended the long struggles over jurisdiction, as instanced in the cases, and over the effort to throw over private operations the protective mantle of governmental immunity, all that is presented for decision in this case is whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable under the general laws of the state for severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use. For the same reason that the statute under which the exaction is made is a general excise statute, not directed at any particular person or property but at all persons who are severers, it cannot be said that the provision in the lease obliging the lessees, as one of the considerations for it, to pay the taxes, was not fully effective."

If the properties here taxed were located on any other land in the State, the tax liability would undoubtedly exist. Just as in the case of the severance tax, the ad valorem tax is not directed at any particular person or property, but, rather, is a tax on all property in Louisiana not otherwise exempted by the Constitution or Statutes of the State. For this reason neither can the taxpayers be heard to say here that the lease provision requiring the lessee, as a consideration for said lease, to pay the taxes, is not equally applicable and effective.

VI.

State Tax Law Existing at Time of Acquisition Remains Enforceable

Paul v. United States, 371 US 245, 9 L Ed 2d 292, 83 S Ct 426, a case before this Court on petition for certiorari, involved the question of whether California could enforce her minimum wholesale price regulations as respects milk sold to the United States at three military installations located within California and used for strictly military consumption, for resale at federal commissaries, and for consumption or resale at various military clubs and post exchanges. As regards the use last designated, for which nonappropriated funds were used, the Court said:

> "This brings us to the question whether Congress has power to exercise 'exclusive legislation' over these enclaves within the meaning of Art. 1 § 8, cl. 17, of the Constitution. * * *
>
> "In either event — whether the land is acquired by purchase or condemnation on the one hand or by cession on the other — a State may condition its 'consent' upon its retention of jurisdiction over the lands consistent with the federal use. James v. Dravo Contracting Co. supra (302 US 146-149). Moreover, as stated in James Stewart & Co. v. Sadrakula, 309 US 94, 99, 100, 84 L Ed 596, 600, 60 S Ct 431, 127 ALR 821:
>
> " 'The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary, its language has long been interpreted so as to permit the continuance until

abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred. This assures that no area however small will be left without a developed legal system for private rights.'

"The conditions expressed in the California Acts, by which California consented to 'the purchase or condemnation' of land by the United States for the prescribed purposes, do not undertake to make applicable to the federal enclaves all future laws of California. Since a State may not legislate with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States, only State law existing at the time of the acquisition remains enforceable, not subsequent laws. See James Stewart & Co. v. Sadrakula, 309 US 94, 84 L Ed 596, 60 S Ct 431, 127 ALR 821, supra; Arlington Hotel v. Fant, 278 US 439, 73 L Ed 447, 49 S Ct 227. * * *"

The Court, therefore, remanded the case to determine whether California's minimum wholesale milk price law was in effect at the time the lands for the enclaves were acquired by the Federal Government. Thereafter, on February 18, 1963, this Court denied certiorari.

In these instances, the ad valorem taxes are imposed by virtue of LSA-Const. Art. 10, § 1, and LSA-RS 47:1701 et seq. Art. 10, § 1, of the Louisiana Constitution has been a part thereof since its adoption in 1921; and, the said statutory provisions, as now embodied in the Revised Statutes of Louisiana, were enacted in the years 1921 and 1924. It is, therefore, clear that such

tax laws existed when the United States acquired the lands by donation in 1930.

It was made clear in *James Stewart & Co. v. Sadrakula* that the State law sought to be applied in *Arlington Hotel v. Fant*, 278 US 439, 73 L Ed 447, 49 S Ct 227, had been enacted after the lands for Hot Springs National Park had been acquired, and, therefore, was not enforceable as to such reservation.

There is no conceivable reason why the State's legislative 'consent' should be construed as an intent to yield exclusive jurisdiction in such cases as these. To the contrary, it is submitted that under the authority of the leading case of James Stewart & Co. v. Sadrakula, supra, and Paul v. United States the State's tax laws existing at the time of the acquisition remains enforceable. The Federal Government gave express recognition to this in embodying as a part of the oil and gas lease the provision for the payment by the lessee of all taxes lawfully assessed and levied "under the laws of the State or the United States". Assuming that Congress has the power to legislate as to such a matter, the fact is that it has not done so; moreover, since the decision in Murphy Corporation and Mississippi River Fuel Corporation, in both of which certiorari was denied by this Court, Congress has given complete assent to the State's exercise of tax jurisdiction over the property levied upon by its failure to so legislate itself, and to immunize the said taxpayers, in the more than ample time that has elapsed.

CONCLUSION

From the foregoing it is plainly proven that the decision of the State appellate court is eminently correct. The law and the facts both support it; and, logic and reason sustain it.

The lands here were donated to the Federal Government for military purposes, and the State granted to it the right of exclusive jurisdiction over them for military purposes. It further guaranteed that they would remain exempt from taxes levied or imposed by or under its authority. But, in these instances the taxes are not levied upon, nor do they affect in any way whatever, any property or instruments of the Federal Government, but, rather, are exacted from the privately owned properties of others, used and maintained by them for their commercial purposes.

The record overwhelmingly establishes that the operation of the oil field and the pipelines have no logical connection with or benefit to the military purpose of the Air Base. Neither are those who operate them in any sense of the term militarily engaged.

It is highly significant that the Federal Government has not complained of any intereference whatever, by reason of these State-imposed taxes, with any of its military or governmental functions or activities. In fact, the taxing jurisdiction of the State has been shown to be entirely compatible and consonant, both in theory and in practice, with the primary objective of the Air Base.

Even if it can be assumed that Congress acquired the power of exclusive legislation over the lands of the reservation, the circumstances in the record demonstrate that the Federal Government has not accepted such jurisdiction as to the leased lands and that traversed by the pipelines, at least to the extent that it would exclude state taxation of the privately owned properties of others, used and maintained in their commercial activities on said lands. And, if otherwise, a relinquishment or abandonment of any such exclusive authority and control is clearly indicated as to the lands on which the taxed properties are situated.

The Federal Government has given clear and unequivocal expression to the assumption that the State taxing jurisdiction would apply to the property of others in the conduct of their commercial activities on certain lands of the reservation. It specifically applies to the leased lands, but shows a general intent as to the pipelines as well.

The transfer of the lands to the Department of Interior and the certification by the Commandant of the Air Base that such lease of lands for oil and gas purposes would not interfere with the primary operation of the reservation furnishes firm evidence of the Government's intent to set such lands apart from the remainder of the lands acquired. The dividing fence is additional proof thereof. The independent operation of the oil field and pipelines confirms this. The lease provision obliging the lessee to pay all taxes due on the minerals produced and

on its other properties stands as further immutable evidence of the recognition of the State's jurisdiction to tax such privately owned properties.

And, finally, the cases have long interpreted the exclusive legislation clause of the United States Constitution to permit a continuance, until abolished, of those State laws existing at the time of surrender of jurisdiction which govern the rights of the occupants of the lands transferred. This should be particularly true where such laws would preserve the taxing power of the State, which is so vital to its sovereign existence, over privately owned properties, used and maintained in commercial pursuits.

The Federal Government has not legislated so as to impose similar taxes on such subjects, nor has acted to immunize the said corporations involved. Its failure to do so, despite the lapse of many years following the court decisions which upheld State taxes imposed upon the severer of minerals from the soil of the reservation and upon privately owned business machines leased to the Federal Government and situated on sites ceded to it, most assuredly stands as an assent to the State's taxing authority. This Court's denial of certiorari in the State severance tax cases affords further approval thereof.

The decision in *Surplus Trading Company v. Cook* 281 US 647, 74 L Ed 1091, 50 S Ct 455, so heavily relied upon by the taxpayers, is not apposite to the cases here presented, for there the Court was careful to point out that Camp Pike came within the specific wording of Art. 1 Sec. 8, cl. 17, of the United States Constitution, relat-

ing to "forts, magazines, arsenals, dockyards, and other needful buildings." The facts there involved are entirely different from those here.

Accordingly, the decision of the Court of Appeal, Second Circuit, of the State of Louisiana, should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been served on Leon O'Quin, Esq., of counsel of record for the petitioner, Humble Pipe Line Company, by depositing the same in the United States mail with First Class Postage prepaid, addressed to him at his Post Office address.

Shreveport, Louisiana, this _____ day of February, A. D., 1964.

FERDINAND A. CASHIO
of Counsel for Respondent

APPENDIX

LOUISIANA CIVIL CODE —

LSA-C. C., Art. 490

"Art. 490. Ownership is divided to perfect and imperfect.

Ownership is perfect, when it is perpetual, and when the thing is unincumbered with any real right towards any other person than the owner.

On the contrary, ownership is imperfect, when it is to terminate at a certain time or on a condition, or if the thing, which is the object of it, being an immovable, is charged with any real right towards a third person; as a usufruct, use or servitude.

When an immovable is subject to a usufruct, the owner of it is said to possess the naked ownership."

LOUISIANA CONSTITUTION —

LSA-Const., Art. 10 § 1

"Sec. 1. Taxing power; specific taxes

Section 1. Vesting of power: restrictions; assessments and valuations. The power of taxation shall be vested in the Legislature; shall never be surrendered, suspended or contracted away; and all taxes shall be uniform upon the same of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value, ascertained as directed by law * * *"

LOUISIANA REVISED STATUTES —

LSA-RS 47:1701

"Sec. 1701. Imposition of tax

A. Tax of five and one-fourth mills on the dollar. There are hereby levied for state purposes, annual taxes amounting in the aggregate to * * * of the assessed value of all property situated within the state except such as is especially exempted from taxation by law; the property not otherwise exempt from taxation of all nonresident persons, firms, corporations, partnerships, associations, or companies is hereby declared subject to assessment and taxation, in the same manner as all other property in the State of Louisiana."